



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, OPC, MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

The Landlord's agent said she served the Tenants in person on November 4, 2010 with a copy of the Application, amended Application and Notice of Hearing (the "hearing package"). Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This month-to-month tenancy started on August 15, 2010. Rent is \$550.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$275.00 at the beginning of the tenancy.

The Landlord's agent said she served the Tenants on September 14, 2010 with a One Month Notice to End Tenancy for Cause dated September 14, 2010. The Landlord's agent said the Tenants paid \$275.00 for October 2010 rent and advised her that they were only paying one half of a month's rent because they would be vacating on October 15, 2010. The Landlord's agent said she agreed to this arrangement if the Tenants were moving out as they claimed, however the Tenants did not move out on October 15, 2010 and as a result, on October 16, 2010 she served the Tenants in person with a 10 Day Notice to End Tenancy for Unpaid Rent dated October 16, 2010. The Landlord's agent said the Tenants have made no other payments and November 2010 rent is unpaid and are still residing in the rental unit.



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Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Section 47(4) of the Act states that if a Tenant fails to apply for dispute resolution **within 10 days of receiving** a One Month Notice to End Tenancy for Cause, then under s. 47(5) of the Act, they are conclusively presumed have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

I find that the Tenants received the One Month Notice to End Tenancy for Cause dated September 14, 2010 on September 14, 2010 but did not apply for dispute resolution to dispute it. I also find that the Tenants received the 10 Day Notice to End Tenancy for Unpaid Rent dated October 16, 2010 on October 16, 2010 but did not apply for dispute resolution to dispute it and have not paid the outstanding rent. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 2 days after service of it on the Tenants. I also find that the Landlord is entitled to recover rent arrears in the amount of \$275.00 for October 2010 and \$550.00 for November 2010 as well as the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing of \$600.00.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of **\$600.00** have been issued to the Landlord. A copy of the Orders must be served on the Tenants; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 24, 2010.

Dispute Resolution Officer